

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0103
IFTA
For The Tax Period 1999-2001**

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ISSUES

I. International Fuel Tax Agreement-Imposition

Authority: IC 6-8.1-3-14, IC 6-6-4.1-4(a), IC 6-6-4.1-4.5, IC 6-8.1-5-1 (b), IC 6-8.1-5-4(a).

The taxpayer protests the imposition of IFTA taxes.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

The taxpayer is a corporation engaged in trucking with one truck and a driver. After an audit, Indiana Department of Revenue, hereinafter referred to as the "department," assessed International Fuel Tax Agreement (IFTA) taxes, penalty, and interest against the taxpayer. The taxpayer protested this assessment. A hearing was held. This Letter of Findings results.

I. International Fuel Tax Agreement-Imposition

DISCUSSION

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor fuel taxes. The agreement's goal is to simplify the tax, licensing, and reporting requirements of interstate motor carriers such as the taxpayer. The agreement itself is not a statute, but was implemented in Indiana pursuant to the authority granted under IC 6-8.1-3-14.

The taxpayer protests the department's imposition of taxes pursuant to IFTA.

The taxpayer was a trucking concern that operated in Indiana. As such, it operated on Indiana highways and consumed motor fuel. Therefore, the taxpayer was subject to IFTA taxes.

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). Taxpayers have the duty to maintain books and records of their affairs and present those to the department for review upon the department's request. IC 6-8.1-5-4(a).

The taxpayer was unable to produce any documentation demonstrating that it had paid the proper amount of tax on the motor fuel it used in its operations. Due to the lack of documentation, the department assessed tax based on the best information available, mileage records on the taxpayer's IRP applications. The taxpayer claimed that it was not responsible for keeping such documentation since the taxpayer operated under a lease arrangement with a Pennsylvania corporation. That corporation, according to the taxpayer, was responsible for all filings and payment of IFTA taxes. The taxpayer was unable to produce the lease or any other documentation relating to a relationship between itself and the Pennsylvania corporation. The taxpayer failed to sustain its burden of proving that the department incorrectly imposed IFTA taxes in this situation.

FINDING

The taxpayer's protest is denied.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Through its lack of reasonable care and failure to follow the instructions of the department, the taxpayer did not pay taxes it owed to the state. This constitutes negligence.

FINDING

The taxpayer's protest is denied.